

## **REMARKS**

### **Status of the Claims**

Claims 1-5 are present in the application.

Claims 1-5 are currently amended.

### **Specification**

A new title has been provide as requested by the Examiner.

In the office action, the Examiner referred to an amendment that was filed September 16, 2008. Our records do not show that such an amendment was filed nor do the USPTO records. A copy of the listing of documents filed in the application from the USPTO is attached for the Examiner's convenience. However, the Examiner's concern has been responded to in this amendment.

### **Drawings**

The drawings were objected to on the basis that every feature of the invention was not shown. Applicant's believe that all the features of the invention are shown in the drawings in particular in Fig. 2B and Fig. 4B. Fig 2B shows the sealing ledge **32** which is part of the tamper indication band **30**. This sealing ledge **32** is positioned over locking ring **41** which shows the cap **12** in the first pre-cap position. Fig 4B shows the cap **12** in the second full cap position wherein the cap is sealed onto the spout and cannot be removed without fracturing the tamper indication band **30**. Please note that Fig. 4B shows the sealing ledge **32** in position over the locking ring **41** thereby making it impossible to remove the cap **12** without fracturing the tamper indication band **30**.

### **Claim Objections**

Claim 1 was amended as suggested in the office action and "external rib" has been amended to "external annular rib" thereby obviating the rejection.

### **Claim Rejections – 35 USC § 112**

Claim 5 was rejected under 35 U.S.C. 112 first paragraph on the basis that it was not clear from the specification how a locking ring is present on the cap and how it engages the tamper evident band on the cap. In the following discussion, Applicant will refer to the publication of the application US 2007/0181578 A1. In particular, see par [0034] - par [0037], which clearly describe the engagement of the cap **12** having a tamper indicating band **30** with the spout **16** in the first pre-cap position and in the second full cap position. Referring to Fig. 2B, which shows the cap in the first pre-cap position, note that the tamper indicating band **30** which is attached to the external skirt **28** of the cap **12** has a sealing ledge **32** that is positioned on top of locking ring **41**. A seal is formed between the external skirt **28** and the internal skirt **34** (Fig. 3). This allows for the removal of the cap **12** for filling the container without breaking the tamper indicating band **30**. In the full cap position as shown in Fig. 4B, the cap **12** has been forced into its closed position. Note that the sealing ledge **32** has been forced over the locking ring **41** which makes it impossible to remove the cap **12** without fracturing the tamper indicating band **30**.

Claims 2-5 were rejected under 35 U.S.C. 112 second paragraph as being indefinite for failing to point out the invention. Claim 2 has been amended to remove the objected "from which" and an appropriate amendment was made for this language. In Claims 4 and 5 an antecedent basis was provided for the "pre-cap position" and the "full cap position". It is believed that the above explanation of the invention will clarify the language of claim 5. If, according to the Examiner, claim 5 requires additional amendments, Applicant will comply to any reasonable suggestions for such amendments.

### **Claim Rejections 35 USC § 102**

Claims 1-5 were rejected under 35 U.S.C. 102(b) as being anticipated by Kuenzig US Patent 4,566,601, *hereinafter* "Kuenzig". Kuenzig was held to disclose a temper evident assembly for use with a fluid dispensing device. The differences between Applicant's invention and the device disclosed by Kuenzig are as follows: Kuenzig does not have a cap that can be placed in two positions as does Applicant.

This is an important feature of Applicant's invention. In Kuenzig, once the cap is placed on the spout, it cannot be removed without breaking the skirt **21** along its score line **32**. (See Kuenzig, col. 5, lines 19-63). Further, Kuenzig requires a grips tab **34** (a tear tab) which Applicant does not have in his invention. The sealing of the Kuenzig cap to the spout is different in that the cap has internal groves that fit over the external ribs of the cap and the only way one can remove the cap once it is positioned is to tear open the skirt.

In contrast, Applicants invention utilizes external ribs on the spout to hold the cap in place in the pre-cap position and the cap forms a seal with the spout but is removable without breaking the tamper indicating band so the container can be filled. In Kuenzig, once the cap is in place and forms a seal, the skirt must be broken to remove the cap. In Applicant's invention, the cap is removed and the container filled and then the cap is forced into the closed position (second full cap position) and sealed via the sealing ledge **32** being forced over the locking ring **41** thereby forming a sealed container which upon opening, will fracture the tamper indicating band **30**. This cannot be accomplished with Kuenzig's device.

The advantage of Applicant's invention is that the container can be kept sealed and in a sterile condition until it is ready to be filled and then permanently sealed and the same cap can be used to keep the container sterile and to seal the container after it is filled. With Kuenzig, a separate seal would be required to keep the container sterile before it is filled and sealed. On filling the cap would be removed thereby breaking the seal, then the container would be filled and another cap would be applied to seal the container. Further, the sealing mechanism of the Kuenzig cap is completely different from the cap sealing technique used by Applicant.

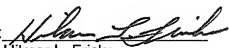
In summary, Applicant's invention cannot be anticipated by Kuenzig nor is it obvious in view of Kuenzig for the reasons provided above.

### **CONCLUSION**

In view of the above remarks, Applicants respectfully submit that the stated grounds of rejection have been properly traversed, accommodated, or rendered moot and that a complete response has been made to the Office Action mailed on April 28, 2009. Therefore, Applicants believe that the application stands in condition for allowance with withdrawal of all grounds of rejection. A Notice of Allowance is respectfully solicited.

In order to expedite disposition of this case, the Examiner is invited to contact Applicants' representative at the telephone number below to resolve any remaining issues. Should there be a fee due which is not accounted for, please charge such fee to Deposit Account No. 501447 (Potter Anderson & Corroon LLP).

Respectfully submitted,

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Date: October 16, 2009